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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CAMILLE YOUSSEF AWAD, Defendant and Appellant.	G050579 (Super. Ct. No. 14NF0221) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lance Jensen, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Marvin Mizell and Allison V. Hawley, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Camille Youssef Awad appealed from a judgment sentencing him to five years and eight months in prison after a jury found him guilty of four counts of grand theft and four counts of forgery. His opening brief asserted two grounds; insufficiency of the evidence supporting his conviction, and one forgery conviction should be reduced to a misdemeanor under the Safe Neighborhoods and Schools Act (Proposition 47). We granted a limited remand of the appeal that allowed defendant to petition the trial court to reclassify the forgery conviction. (*People v. Awad* (2015) 238 Cal.App.4th 215.) The trial court granted the petition, reduced defendant's conviction on count 5 to a misdemeanor, and modified his current sentence to a five-year prison term.

The case is now before us for a decision on the appeal's merits. Defendant acknowledges the trial court's ruling on count 5 moots his second argument. Thus, the sole remaining contention is whether the evidence supports defendant's conviction. We conclude the answer is yes and affirm the judgment.

FACTS

Defendant worked at a gas station. Daniel Gehringer testified that he frequented the business and became acquainted with defendant. Gehringer described defendant as "a friendly guy," and acknowledged defendant often purchased vitamins from him.

In August 2010, Gehringer complained to defendant about the high fees he was paying a debt consolidation firm to discharge the balances owed on several credit cards. Defendant convinced Gehringer to cancel his agreement with the debt consolidation company. He claimed a friend, identified only as "Luis," could negotiate a settlement of Gehringer's debts for only 30 percent of the outstanding amounts.

Over the next several weeks, Gehringer signed and gave defendant four checks. The first, in the amount of $1,576, was made payable to Wells Fargo. Two days after Gehringer handed the check to defendant, it was presented for payment at a Wells Fargo branch office and the funds deposited into the account of Czarina Pabico. At the

time of presentment, the payee's name on the check had been altered to read "Wells Fargo/cash."

Gehringer's second check, also payable to Wells Fargo, was in the amount of $1,292. Again, two days after defendant received the check, it was presented for payment at a Wells Fargo branch office and the funds deposited into Pabico's account. As before, the payee line had been altered to read "Wells Fargo/cash."

The third check was in the amount of $168.98 and payable to Wells Fargo. The same day Gehringer gave it to defendant, the instrument's payee line was altered to read "Wells Fargo/cash," cashed, and the funds deposited into Pabico's account.

Gehringer's last check, in the amount of $9,000, was made payable to Chase Bank. Several days after he gave the check to defendant, it was presented for payment and the funds deposited into an account Pabico maintained at Chase Bank. Again, the payee line had been altered to read "Chase Bank/cash." Gehringer denied writing "/cash" on any of the checks' payee lines.

The prosecution presented evidence establishing a relationship between defendant and Pabico. Gehringer testified he learned defendant was married and had children. Pabico had two accounts at Chase Bank, the checking account in her own name, and a savings account held in both her name and that of Girgis Awad (Girgis). The prosecution introduced a birth certificate for Girgis, which listed Pabico and defendant as Girgis's parents. Defendant and Pabico also used the same post office box address to receive mail.

Gehringer testified defendant told him that he would be receiving letters to sign, which he could send to the credit card companies to settle the outstanding balances. The letters never materialized. Initially, defendant claimed "Luis" lived in another state and had transmitted the letters digitally, but in a format defendant could not open on his computer. Defendant told Gehringer that he planned to purchase a software program allowing him to print out the letters. Later, defendant claimed the program did not work

and then said he was going to acquire a better computer. Next defendant said he was in the process of opening his own gas station and he was waiting until that event before setting up the computer and printing out the letters. Defendant acknowledged each check's payee line had been altered but did not explain why that had occurred.

In July 2012, Gehringer learned defendant no longer worked at the gas station. Gehringer filed a police report.

The same month, Ronald Rajcic, another gas station customer acquainted with defendant, gave defendant some Department of Motor Vehicles (DMV) paperwork and a signed blank check in return for latter's promise to use the check to pay the vehicle registration fees on Rajcic's automobile. Rajcic testified that he was about to leave on a trip and needed to pay the registration fees so that his son could legally drive the vehicle.

While on the trip, Rajcic spoke with defendant by telephone. Defendant told Rajcic the amount he paid for the registration fees was $785, and that Rajcic could pick up the vehicle tags at the DMV office. Upon his return, Rajcic went to the DMV. At that time, he learned the fee was only $585. Rajcic went to his bank and discovered the check had been made payable to Pabico in the amount of $50,000 and had been presented for payment at a Wells Fargo branch the day after he gave it to defendant.

Rajcic unsuccessfully tried to contact defendant by telephone. He also went to the gas station, but learned defendant was no longer there. Rajcic filed a report with the police department. Shortly thereafter, defendant spoke with Rajcic by telephone, promising to take care of the problem. However, then defendant disappeared.

On cross-examination, Rajcic admitted that between 2009 and 2011 he had loaned defendant over $200,000 to help him open a gas station. Rajcic also acknowledged failing to mention these loans when he initially contacted the police. A police officer who spoke with Rajcic testified Rajcic was afraid his family would seek to place him under a conservatorship if they learned about the loans.

The police were also unsuccessful in contacting defendant. An arrest warrant was issued and defendant was arrested in Arizona in October 2013.

DISCUSSION

As noted, the sole remaining issue in this appeal is the sufficiency of the evidence supporting defendant's conviction on all counts.

Defendant argues there is no evidence that he personally altered Gehringer's checks, nor any direct proof that he aided and abetted Pabico in doing so or assisted her in stealing the victims' funds. He acknowledges lying to the victims, but argues this evidence does not affirmatively prove he acted with the specific intent required to support either theft or forgery. Defendant also notes the prosecution failed to present any evidence he received any of the stolen funds. Further, defendant emphasizes the absence of evidence supporting the prosecution's case such as handwriting experts, video surveillance tapes from the banks where the deposits were made, how Pabico obtained possession of the checks, as well as the limited evidence of his relationship to Pabico. He also attacks the credibility of the victims, citing Rajcic's failure to immediately tell the police about his prior business dealings with defendant, or explain why he did not ask his son to pay the outstanding vehicle registration fees. As for Gehringer, defendant notes his mysterious two-year delay in contacting the police about the withdrawals from his accounts even though there was no progress in eliminating his credit card debts.

These arguments ignore the applicable standard of review for an insufficiency of the evidence claim. "'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] We determine 'whether, after viewing the evidence in the light most favorable to the

prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*People v. Edwards* (2013) 57 Cal.4th 658, 715; *Jackson v. Virginia* (1979) 443 U.S. 307, 319.)

In addition, "'[a] reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v Covarrubias* (2016) 1 Cal.5th 838, 890.) Even where "'the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]'" (*Ibid*.)

The evidence clearly supports defendant's conviction on both the theft and forgery counts. Defendant convinced Gehringer to sign and give him four checks made out to banks with which Gehringer had credit card accounts, promising Gehringer the funds would be used to negotiate the elimination of the balances owed on the cards. Contrary to this representation, within days of defendant's receipt of each check, the instrument's payee line had been altered with the phrase "/cash," presented for payment at a bank, and the funds deposited into the account of a woman with whom defendant shared the same post office address and had fathered a child. Gehringer denied inserting "/cash" on the payee line or giving anyone else permission to do so. Defendant admittedly lied when Gehringer inquired about the progress on the resolution of his outstanding credit card debts. Further, defendant never explained why each check had been altered before being cashed.

As for Rajcic, defendant obtained a signed blank check in return for his promise to use it to pay the registration fees for Rajcic's vehicle. Again, contrary to his pledge, the check was made payable to Pabico in the amount of $50,000 and presented for payment at a branch of Pabico's bank the very next day. When contacted by Rajcic,

defendant lied about what had occurred. Finally, defendant left his job and fled to another state.

Defendant suggests the absence of direct proof precludes his conviction for theft or forgery. Not so. The crime of theft "may be proved by circumstantial evidence." (*People v. Kroll* (1962) 112 Cal.App.2d 602, 610.) The elements of the crime of forgery, the false making or unauthorized alteration of a document with the intent to defraud (*People v. Reisdorff* (1971) 17 Cal.App.3d 675, 678), can also be established by circumstantial evidence. (*People v. Cullen* (1950) 99 Cal.App.2d 468, 473, 475-476.)

Defendant's reliance on the prosecution's failure to call handwriting experts in an effort to identify who altered or completed the checks at issue and the absence of surveillance camera footage showing who presented the checks for deposit conflicts with the standard of review for insufficiency of evidence claims. As the United States Supreme Court has declared, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia*, *supra*, 443 U.S. at p. 319; see *Cavazos v. Smith* (2011) 565 U.S. 1, 7 [rejecting as "plainly wrong" federal appellate court's "conclusion" in habeas corpus review of state court decision that "'[a]bsence of evidence cannot constitute proof beyond a reasonable doubt'"].)

Defendant asserts the lack of evidence showing he altered the checks, deposited them into Pabico's accounts, or received any of the appropriated funds means he could only be found guilty on a theory that he aided and abetted Pabico in committing the crimes. He further argues this theory fails because there is no direct proof he knew of Pabico's criminal scheme or intended to assist her in effectuating it. This argument also lacks merit.

"'An aider and abettor is one who acts "with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of

encouraging or facilitating commission of, the offense." [Citation.]'" (*People v. Smith* (2014) 60 Cal.4th 603, 611.) The determination of whether a person aided and abetted a crime presents a question of fact. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1054.) "Among the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense. [Citations.] In addition, flight is one of the factors which is relevant in determining consciousness of guilt. [Citation.]" (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095.) Since evidence of one's state of mind "'is almost inevitably circumstantial'" (*Nguyen*, at p. 1055), "*proof* of the aider and abettor's intent may be made by way of an inference from h[is] volitional acts with knowledge of their probable consequences." (*People v. Beeman* (1984) 35 Cal.3d 547, 559-560.)

The evidence established a close relationship between defendant and Pabico. Further, within days of defendant's receipt of each check, the instrument had been altered or completed in a manner that allowed funds to be deposited into Pabico's accounts contrary to what defendant told or promised the victims. Defendant then lied to the victims about what had been done with their checks and eventually fled the state. Proof that defendant personally benefited from the scheme is not required. (*People v. Ashley* (1954) 42 Cal.2d 246, 259.) Thus, the evidence sufficed to support defendant's conviction either as a direct perpetrator of the scheme or as an aider and abettor of Pabico's criminal conduct.

The cases cited by defendant in support of his attack on the aider and abettor theory do not support his argument. He suggests *People v. McKissack* (1968) 259 Cal.App.2d 283 established the minimal requirements for convicting a person of forgery on an aiding and abetting theory. *McKissack* simply held the evidence in that case supported the defendant's forgery conviction. The court did not purport to declare a baseline of what must be proven to uphold a conviction for aiding and abetting a forgery.

Next, defendant claims a court cannot give aiding and abetting instructions if the perpetrator is wholly unknown, citing *People v. Perez* (2005) 35 Cal.4th 1219, 1226 and *People v. Singleton* (1987) 196 Cal.App.3d 488. Neither case supports his contention. In *Perez*, the Supreme Court held a defendant could not be convicted of a crime on an aider and abettor theory "[w]ithout proof of a criminal act by [the perpetrator]." (*Perez*, at p. 1227.) Here, there was uncontradicted evidence of criminal acts committed by someone. The victims' checks were altered or completed contrary to their authorization, negotiated and the funds deposited into Pabico's accounts, and not used for the intended purposes.

Singleton is factually distinguishable from the present case. There a woman riding as a passenger in a car was prosecuted for, inter alia, possession of cocaine for sale. At trial, the prosecution argued the defendant could be convicted of the charge on the theory she was aiding and abetting an unidentified perpetrator referred to only as "'Mr. X.'" (*People v. Singleton*, *supra*, 196 Cal.App.3d at p. 492.) The appellate court reversed the defendant's possession for sale conviction, finding there was "no evidentiary foundation for accomplice liability hinged solely upon the prosecution's theory." (*Id.* at p. 493.) In this case, the evidence established both the existence of a named perpetrator, Pabico, and her relationship to defendant.

Defendant argues that his lies and flight, while reflecting a consciousness of guilt, are not, standing alone, sufficient to justify his conviction. We agree. (*People v. Mendoza* (2000) 24 Cal.4th 130, 180 [flight instruction "informs the jury that it may consider flight in connection with all other proven facts"]; *People v. Kelly* (1992) 1 Cal.4th 495, 531-532 [instruction informing jury that it "may consider the evidence" defendant made false statements "*but it is not sufficient by itself to prove guilt*" was proper].) But, as discussed above, here there was much more incriminating evidence than merely proof of a consciousness of guilt based on falsehoods and flight.

Finally, defendant attacks the credibility of the victims. Defendant cites Rajcic's failure to initially tell the police about their prior business dealings and Rajcic's "convoluted account of why he did not just give the money to his son . . . to register the car." As for Gehringer, defendant points to his two-year delay in "report[ing] large vanished sums of money to [the] police."

Again, we find defendant's argument unpersuasive. Witness testimony containing inconsistencies or reflecting unusual circumstances will not suffice to overturn a finding of guilt. (*People v. Hovarter* (2008) 44 Cal.4th 983, 996 ["'Except in . . . rare instances of demonstrable falsity, doubts about the credibility of the in-court witness should be left for the jury's resolution'"]; *People v. Ennis* (2010) 190 Cal.App.4th 721, 728 [""'To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions"'"].) Further, while the victims' conduct might be described as gullible or foolish, that is not a defense. (*People v. Cummings* (1899) 123 Cal. 269, 272 ["the guilt of the accused does not depend upon the degree of folly or credulity of the party defrauded"]; *People v. Gilliam* (1956) 141 Cal.App.2d 749, 751.)

Thus, based on a review of the whole appellate record we conclude the evidence supports defendant's conviction on all counts.

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.